

IN THE SENATE

SENATE BILL NO. 1014

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO RAPE; AMENDING SECTION 18-6101, IDAHO CODE, TO PROVIDE ADDITIONAL PROVISIONS RELATING TO THE DEFINITION OF RAPE; AMENDING SECTION 18-8304, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AND AMENDING SECTION 19-401, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 18-6101, Idaho Code, be, and the same is hereby amended to read as follows:

18-6101. RAPE DEFINED. Rape is defined as the penetration, however slight, of the oral, anal or vaginal opening with the perpetrator's penis accomplished with a female under any one (1) of the following circumstances:

(1) Where the female is under the age of sixteen (16) years and the perpetrator is eighteen (18) years of age or older.

(2) Where the female is sixteen (16) or seventeen (17) years of age and the perpetrator is three (3) years or more older than the female.

(3) Where she is incapable, through any unsoundness of mind, due to any cause including, but not limited to, mental illness, mental disability or developmental disability, whether temporary or permanent, of giving legal consent.

(4) Where she resists but her resistance is overcome by force or violence.

(5) Where she is prevented from resistance by the infliction, attempted infliction, or threatened infliction of bodily harm, accompanied by apparent power of execution; or is unable to resist due to any intoxicating, narcotic, or anaesthetic substance.

(6) Where she is at the time unconscious of the nature of the act. As used in this section, "unconscious of the nature of the act" means incapable of resisting because the victim meets one (1) of the following conditions:

(a) Was unconscious or asleep;

(b) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(7) Where she submits under the belief that the person committing the act is her husband, and the belief is induced by artifice, pretense or concealment practiced by the accused, with intent to induce such belief.

(8) Where she submits under the belief that the person committing the act is someone other than the accused, and the belief is induced by artifice, pretense or concealment practiced by the accused, with the intent to induce such belief.

(9) Where she submits under the belief, instilled by the actor, that if she does not submit, the actor will cause physical harm to some person in the future; or cause damage to property; or engage in other conduct constituting a crime; or accuse any person of a crime or cause criminal charges to

1 be instituted against her; or expose a secret or publicize an asserted fact,
 2 whether true or false, tending to subject any person to hatred, contempt or
 3 ridicule.

4 The provisions of subsections (1) and (2) of this section shall not affect
 5 the age requirements in any other provision of law, unless otherwise pro-
 6 vided in any such law. Further, for the purposes of subsection (2) of this
 7 section, in determining whether the perpetrator is three (3) years or more
 8 older than the female, the difference in age shall be measured from the date
 9 of birth of the perpetrator to the date of birth of the female.

10 SECTION 2. That Section 18-8304, Idaho Code, be, and the same is hereby
 11 amended to read as follows:

12 18-8304. APPLICATION OF CHAPTER. (1) The provisions of this chapter
 13 shall apply to any person who:

14 (a) On or after July 1, 1993, is convicted of the crime, or an attempt, a
 15 solicitation, or a conspiracy to commit a crime provided for in section
 16 18-909 (assault with attempt to commit rape, infamous crime against na-
 17 ture, or lewd and lascivious conduct with a minor, but excluding mayhem,
 18 murder or robbery), 18-911 (battery with attempt to commit rape, infa-
 19 mous crime against nature, or lewd and lascivious conduct with a minor,
 20 but excluding mayhem, murder or robbery), 18-919 (sexual exploitation
 21 by a medical care provider), 18-1505B (sexual abuse and exploitation
 22 of a vulnerable adult), 18-1506 (sexual abuse of a child under six-
 23 teen years of age), 18-1506A (ritualized abuse of a child), 18-1507
 24 (sexual exploitation of a child), 18-1507A (possession of sexually
 25 exploitative material for other than a commercial purpose), 18-1508
 26 (lewd conduct with a minor child), 18-1508A (sexual battery of a minor
 27 child sixteen or seventeen years of age), 18-1509A (enticing a child
 28 over the internet), 18-4003(d) (murder committed in perpetration of
 29 rape), 18-4116 (indecent exposure, but excluding a misdemeanor convic-
 30 tion), 18-4502 (first degree kidnapping committed for the purpose of
 31 rape, committing the infamous crime against nature or for committing
 32 any lewd and lascivious act upon any child under the age of sixteen,
 33 or for purposes of sexual gratification or arousal), 18-4503 (sec-
 34 ond degree kidnapping where the victim is an unrelated minor child),
 35 18-5609 (inducing person under eighteen years of age into prostitu-
 36 tion), 18-6101 (rape, but excluding 18-6101(1) where the defendant is
 37 eighteen years of age or where the defendant is exempted under subsec-
 38 tion (4) of this section), 18-6108 (male rape, but excluding 18-6108(1)
 39 where the defendant is eighteen years of age or where the defendant is
 40 exempted under subsection (4) of this section), 18-6110 (sexual contact
 41 with a prisoner), 18-6602 (incest), 18-6605 (crime against nature),
 42 18-6608 (forcible sexual penetration by use of a foreign object), upon
 43 a second or subsequent conviction under 18-6609 (video voyeurism) or
 44 18-8602(1), Idaho Code, (sex trafficking).

45 (b) On or after July 1, 1993, has been convicted of any crime, an at-
 46 tempt, a solicitation or a conspiracy to commit a crime in another
 47 state, territory, commonwealth, or other jurisdiction of the United
 48 States, including tribal courts and military courts, that is substan-
 49 tially equivalent to the offenses listed in subsection (1)(a) of this

1 section and enters the state to establish permanent or temporary resi-
2 dence.

3 (c) Has been convicted of any crime, an attempt, a solicitation or a
4 conspiracy to commit a crime in another state, territory, commonwealth,
5 or other jurisdiction of the United States, including tribal courts
6 and military courts, that is substantially equivalent to the offenses
7 listed in subsection (1) (a) of this section and was required to register
8 as a sex offender in any other state or jurisdiction when he established
9 permanent or temporary residency in Idaho.

10 (d) Pleads guilty to or has been found guilty of a crime covered in this
11 chapter prior to July 1, 1993, and the person, as a result of the of-
12 fense, is incarcerated in a county jail facility or a penal facility or
13 is under probation or parole supervision, on or after July 1, 1993.

14 (e) Is a nonresident regularly employed or working in Idaho or is a stu-
15 dent in the state of Idaho and was convicted, found guilty or pleaded
16 guilty to a crime covered by this chapter and, as a result of such con-
17 viction, finding or plea, is required to register in his state of resi-
18 dence.

19 (2) An offender shall not be required to comply with the registration
20 provisions of this chapter while incarcerated in a correctional institution
21 of the department of correction, a county jail facility, committed to the de-
22 partment of juvenile corrections or committed to a mental health institution
23 of the department of health and welfare.

24 (3) A conviction for purposes of this chapter means that the person has
25 pled guilty or has been found guilty, notwithstanding the form of the judg-
26 ment or withheld judgment.

27 (4) When a defendant is convicted of rape under section 18-6101(2) or
28 18-6108(2), Idaho Code, and at the time of the offense the defendant is nine-
29 teen (19) or twenty (20) years of age and not more than three (3) years older
30 than the victim of the rape, the court may order that the defendant is exempt
31 from the requirements of this chapter upon a finding by the court that:

32 (a) All parties have stipulated to the exemption; or

33 (b) The defendant has demonstrated by clear and convincing evidence
34 that he is not a risk to commit another crime identified in subsection
35 (1) of this section and in the case there were no allegations by the vic-
36 tim of any violation of section 18-6101(3) through (~~8~~9) or 18-6108(3)
37 through (7), Idaho Code.

38 SECTION 3. That Section 19-401, Idaho Code, be, and the same is hereby
39 amended to read as follows:

40 19-401. NO STATUTE OF LIMITATIONS FOR CERTAIN FELONIES. Notwithstand-
41 ing any other provision of law, there is no limitation of time within which a
42 prosecution for the following crimes must be commenced:

43 (1) Murder;

44 (2) Voluntary manslaughter;

45 (3) Rape pursuant to section 18-6101(3) through (~~8~~9), or section
46 18-6108(3) through (7), Idaho Code;

47 (4) Sexual abuse of a child or lewd conduct with a child as set forth in
48 sections 18-1506 and 18-1508, Idaho Code; or

1 (5) An act of terrorism as set forth in sections 18-8102, 18-8103,
2 18-3322, 18-3323 and 18-3324, Idaho Code.